

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

HERSHEL RODNEY NUZUM,)	
)	8:05cv406
Plaintiff,)	
)	MEMORANDUM AND ORDER
vs.)	
)	
SALLIE MAE SERVICING)	
CORPORATION,)	
)	
Defendant.)	

In filing no. 5, I denied filing no. 2, the Motion to Proceed In Forma Pauperis ("IFP") filed by the plaintiff, Hershel Rodney Nuzum; and filing no. 3, the plaintiff's Motion to Repeal the Higher Education Act of 1965. Because the plaintiff had moved for leave to proceed IFP, I screened his complaint pursuant to the standards set forth in 28 U.S.C. § 1915(e)(2), which states:

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

(A) the allegation of poverty is untrue; or

(B) the action or appeal--

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

I found that, in this case, the plaintiff raised claims which he had previously presented or could have raised in Case No. 8:04cv167, Nuzum v. Sallie Mae Servicing Corporation et al. (D. Neb.), which ended in a final judgment in this court on May 4, 2005. Therefore, I directed the plaintiff to show cause why this case should not be dismissed

pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), because the plaintiff's present claims are barred by res judicata.

The plaintiff has paid the court's filing fee and has filed a Response (filing no. 6) in which he accuses the defendant of perjury. It appears to me that the plaintiff could have raised that claim in Case No. 8:04cv167. However, because the plaintiff has paid the filing fee and has complied with my previous Order (filing no. 5), I will direct the Clerk of Court to issue a summons for the plaintiff to serve upon the defendant, and the defendant may address the question of res judicata if it so wishes.

THEREFORE, IT IS ORDERED:

1. That because the plaintiff has paid the filing fee, this case is no longer subject to initial review; and
2. That because the plaintiff has complied with the Order (filing no. 5) requiring the plaintiff to show cause, the Clerk of Court shall issue a summons to the plaintiff so that he may serve the defendant within the 120-day period required by Fed. R. Civ. P. 4(m).

DATED this 29th day of September, 2005.

BY THE COURT:

/s Richard G. Kopf
United States District Judge